

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

SUCCESSION CAUSE NO. E023 OF 2022

IN THE MATTER OF THE ESTATE OF THE LATE JOSEPH

CHESOBOI KERING (DECEASED)

BETWEEN

SARAH CHERUTO TONUI PETITIONER

VS

FESTUS KERING 1ST OBJECTOR

PAUL K.KOSKE 2ND OBJECTOR

RULING

1. The Petitioner petitioned for Letters of Administration Intestate in respect of the deceased's estate on 12th May 2022. A Grant was issued in her name on 19th June 2023.

2. The Petitioner filed an Application dated 12th August 2025 for confirmation of the Grant. The Petitioner stated that the deceased's estate comprised of KERICHO/SILIBWET/773, KERICHO/SILIBWET/17 and NAROK/TRANSMARA/OLOLMASANI/562. The Petitioner further stated that the deceased was survived by: -

1st House

Tapnyobi Chepkirui Kering	Wife
Festus Kering	Son
Florence Chepkemoi	Daughter
Annah Tonui	Daughter
Regina Kirui	Daughter
Sarah Cheruto Tonui	Daughter
Paul K. Koske	Son

2nd House

Juliana Chepkorir Keter Daughter

Paul Koskei Son

Wesley Koskei Son

Lazarus Koskei Son

Dominic Kipkurui Bett Son

3rd House

Hillary Koskei Son

3. The Petitioner's preferred mode of distribution was as follows: -

KERICHO/SILIBWET/773

Tapnyobi Chepkirui Kering 0.30 acres

Sarah Cheruto Tonui 0.30 acres

Paul K. Koske	0.30 acres
Festus Kering	0.30 acres
Florence Chepkemoi	0.30 acres
Annah Tonui	0.30 acres
Juliana Chepkorir Keter	0.30 acres
Regina Kirui	0.30 acres
Paul Koskei	0.30 acres
Wesley Koskei	0.30 acres
Lazarus Koskei	0.30 acres
Dominic Kipkurui Bett	0.30 acres
Hillary Koskei	0.30 acres

KERICHO/SILIBWET/17

Tapnyobi Chepkirui Kering	0.88 acres
Sarah Cheruto Tonui	0.88 acres
Paul K. Koske	0.88 acres

Festus Kering	0.88 acres
Florence Chepkemoi	0.88 acres
Annah Tonui	0.88 acres
Juliana Chepkorir Keter	0.88 acres
Regina Kirui	0.88 acres
Paul Koskei	0.88 acres
Wesley Koskei	0.88 acres
Lazarus Koskei	0.88 acres
Dominic Kipkurui Bett	0.88 acres
Hillary Koskei	0.88 acres

NAROK/TRANSMARA/OLOLMASANI/562

Tapnyobi Chepkirui Kering	0.48 acres
Sarah Cheruto Tonui	0.48 acres
Paul K. Koske	0.48 acres
Festus Kering	0.48 acres

Florence Chepkemoi	0.48 acres
Annah Tonui	0.48 acres
Juliana Chepkorir Keter	0.48 acres
Regina Kirui	0.48 acres
Paul Koskei	0.48 acres
Wesley Koskei	0.48 acres
Lazarus Koskei	0.48 acres
Dominic Kipkurui Bett	0.48 acres
Hillary Koskei	0.48 acres

4. Through her submissions dated 13th August 2025, the Petitioner submitted that the deceased's estate should be distributed equally. She relied on **Article 27 of the Constitution of Kenya, sections 35, 38 and 40 of the Law of Succession Act, Re estate of John Musambayi Katumanga (Deceased) (2014) eKLR et.al**

5. It was the Petitioner's submission that the deceased's estate had no liabilities and she did not intermeddle with the deceased's estate. That the Objectors had intermeddled with the estate and could not shift their liabilities onto other beneficiaries.

Objection

6. Through their Affidavit of Protest dated 21st August 2025, the Objectors stated that the Petitioner's proposed distribution was discriminatory. That before the deceased died, he had settled his three households and the Petitioner's proposed distribution did not reflect the deceased's wishes. The Objectors further stated that this court directed that parties meet and attempt to agree on a mode of distribution. That the meeting was chaired by the Area Chief but the Petitioner failed to attend.

7. It was the Objectors' case that the deceased settled the 1st house in Bomet and the 2nd and 3rd houses were settled in

Transmara. That the daughters from the 1st house namely Florence Chepkemoi, Annah Tonui, Regina Kirui and Sarah Cheruto Tonui were all allocated 0.6 acres in KERICHO/SILIBWET/773. It was the Objectors' further case that the Petitioner had intermeddled with the estate by selling the 0.6 acres to strangers.

8. The Objectors stated that after selling the 0.6 acres, the Petitioner was not entitled to any share of the deceased's estate but it was agreed in the meeting that the Petitioner gets 0.55 acres and the other daughters from the 1st house get 0.15 acres each. The Objectors' proposed mode of distribution is as follows: -

KERICHO/SILIBWET/17

Festus Kering	9.0 acres
Paul Kibet Koske	0.1 acres
Paul Kiplangat Koskei	0.04 acres
Lazarus Koskei	0.04 acres

Dominic Kipkurui Bett	0.04 acres
Hillary Koskei	0.04 acres
Wesley Koskei	0.04 acres
Florence Chepkemoi	0.15 acres
Annah Tonui	0.15 acres
Regina Tonui	0.15 acres
Sarah Cheruto Tonui	0.35 acres

KERICHO/SILIBWET/773

Paul Kibet Koske	3.1 acres
Tapnyobi Chepkirui Kering	0.6 acres
Sarah Cheruto Tonui	0.2 acres

NAROK/TRANSMARA/OLOMASANI/562

Paul Kiplangat Koskei	1.54 acres
Lazarus Koskei	1.54 acres

9. Through their written submissions dated 21st August 2025, the Objectors submitted that their proposed mode of distribution had been consented to by all the beneficiaries except the Petitioner. That their proposed mode of distribution was fair and non-discriminatory. The Objectors further submitted that the deceased, in his lifetime, had settled his children across the three parcels. That the 2nd and 3rd house were permanently settled in Transmara while the 1st house did not get a share there.

10. It was the Objectors' submission that the sons from the 2nd and 3rd house were given a share each in KERICHO/SILIBWET/17. They relied on *Mary Rono v Jane Rono & another* (2005) eKLR. It was the Objectors' further submission that the meeting chaired by the Chief settled the issue of distribution.

11.I have gone through the court record, the Summons for Confirmation of Grant dated 2nd August 2024, the Affidavit of Protest dated 21st August 2025, the Petitioner's written submissions dated 13th August 2025 and the Objectors' written submissions dated 21st August 2025. The only issue for my determination was to come up with a fair and just mode of distribution of the deceased's estate.

Analysis

12.From the pleadings, it was an uncontested fact that the deceased was polygamous. The point of contention between the Petitioner and the Objectors was the mode of distribution of the deceased's estate. The Petitioner proposed an equal share between all beneficiaries while on the other hand, the Objectors stated that the deceased had settled his children on the various parcels in his lifetime and that his wishes should be considered and respected during the distribution of his estate.

13. Section 40 of the Law of Succession Act provides: -

- (1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.**
- (2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.**

14. The Court of Appeal in **Elizabeth Chepkoech Salat v Josephine Chesang Chepkwony Salat** [2015] KECA 650 (KLR) held: -

***“Section 40 of the Act does not give discretion to a court to deviate from the general principles therein enunciated. Where a matter is contentious and the parties have not reached a consent judgment, the court is bound to apply the statutory provisions. More specifically, the court has no power to substitute the statutory principles for its own notion of what is an equitable or just decision. However, court has a limited residuary discretion within the statutory provisions to make adjustments to the share of each house or of a beneficiary where, for instance, the deceased had during his lifetime settled any property to a house or beneficiary or to decide which property should be disposed of*”**

to pay liabilities of the estate or to determine which properties should be retained by each house or several houses in trust.

As this Court said in *Mary Rono v. Jane Rono & Another, Civil Appeal No. 66 of 2002 (Eldoret) [2005] eKLR, section 40 does not provide for equality between houses or that each child must receive the same or equal portion...*” (Emphasis mine)

15. Similarly, the Court of Appeal in ***Scolastica Ndululu Suva v Agnes Nthenya Suva [2019] KECA 1053 (KLR)*** stated: -

“In *Mary Rono vs Jane Rono & another (supra)*, Waki JA in the leading judgment, accepted the proposition that the Court had the discretion in ensuring a fair distribution of the deceased’s estate but that the discretion must be exercised judicially on sound legal and factual basis.....It

is therefore evident, that, although section 40 of the Law of Succession Act provides a general provision for the distribution of the estate of a polygamous deceased person, the court has discretion to take into account factual circumstances of the particular case that may be relevant in ensuring equitable and fair distribution of the estate.”

16.I also concur with the sentiments of Odunga J. (as he then was) in **re Estate of Nzolove Kisuke alias Daudi Nzolove Kisuke (Deceased) [2022] KEHC 1495 (KLR)**, where he held: -

“It is therefore clear on judicial authority that the strict application of section 40 of the Law of Succession Act may well lead to an absurdity and I associate myself with the opinion of the Court of Appeal that the said section only provides a

general provision for the distribution of the estate of a polygamous deceased person. However, the court has discretion to take into account factual circumstances of the particular case that may be relevant in ensuring equitable and fair distribution of the estate.....”

17. In support of their case, the Objectors attached a Report from the Senior Chief dated 13th November 2024. I have looked at the Report and it stated that a meeting was held on 15th October 2024 between the deceased's family members and it was chaired by Joseph Korir, the Chairperson of Kapkechwoek Clan. The Report stated that the three daughters (Florence Kering, Anna Tonui & Regina Kirui) from the 1st household complained that their sister, the Petitioner had become the biggest beneficiary of the deceased's estate and that she had sold 0.2 acres from KERICHO/SILIBWET/773 and pocketed the proceeds. That the Petitioner also sold

their 0.2 acres from KERICHO/SILIBWET/17 allocated to them by their mother and also pocketed the proceeds.

18. The Report stated that the Petitioner advised her three sisters not to accept the 0.6 acres from KERICHO/SILIBWET/17 allocated to them by their mother but to instead demand an equal share with their two brothers (Objectors). The Report contained an Agreement between the beneficiaries as to the distribution of the deceased's estate. Crucially, in the Agreement, I have noted that the beneficiaries acknowledged and respected the fact that the deceased had settled his three households during his lifetime.

19. From the Report, it was clear that the deceased had settled his children during his lifetime. The court will be minded to respect the wishes of the deceased in respect to the distribution of his estate. In **Murumba v Natili [2023] KEHC 18759 (KLR)**, the court held: -

“.....The Court is bound to respect the wishes of the deceased on how his children share his possession after death.”

20. Similarly, the Court of Appeal in **Margaret Wanja Elija v Peter Ngari Elijah Kimani [2013] KECA 393 (KLR)** held: -

“.....There is nothing in the law of succession Act cap 160 laws of Kenya which authorizes a court of law to disregard a deceased person’s wishes on how his estate is to be distributed especially where the same is within the parameters permitted by the said succession Act, and it is also fair to the satisfaction of the court and all or a majority of the beneficiaries of the deceased’s’ estate....”

21. I have noted the Petitioner’s conduct throughout the proceedings. She continually refused to attend mediation

sessions. I have also noted from the Report that she (Petitioner) was invited for the family meeting but declined to attend. She was similarly invited for a survey process but declined to attend. Crucially, I have noted from the attendance list, that her siblings attended the family meeting and were in agreement that the deceased had settled them in their respective parcels during his lifetime. It is my finding that the Petitioner was intent on frustrating the conclusion of this matter.

22.As earlier stated, this court is minded to respect the wishes of the deceased. Having gone through the parties' respective proposed modes of distribution, it is my finding that the Objectors' proposed mode of distribution mirrored the deceased's wishes.

23.In the end, I make the following orders: -

I. The Grant dated 19th June 2023 is hereby confirmed.

- II. A Certificate of Confirmation of Grant is hereby issued and it should reflect the mode of distribution contained in the Affidavit of Protest dated 21st August 2025.
- III. Each party to bear their own costs.

Ruling delivered, dated and signed at Bomet this 13th day of November, 2025.

.....
Hon. JULIUS K. NG'ARNG'AR
JUDGE

Ruling delivered in the presence of:

Siele/Susan (Court Assistants).

Nandi for the Petitioner

Ondieki the Objectors